S.B. Civil Writ Petition No.5200/2001
Nihal Singh & Ors. Vs. The Board of Revenue & Ors.

19.02.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri Om Prakash Jhajaria for Shri Praveen Balwada for petitioner.
Shri B.S. Chhaba, Dy. GA.

Heard learned counsel for the parties.

The petitioner has challenged the order passed by the Board of Revenue, Ajmer dated 27.8.2001 whereby the Board of Revenue has reversed the order dated 6.12.1995 passed by the Revenue Appellate Authority, Sikar. The Revenue Appellate Authority by his order dated 6.12.1995 while allowing the appeal of the petitioner has set aside the order passed by the Tehsildar dated 11.4.94 and

Additional Collector dated 26.10.94 and the order passed by the Collector dated 7.12.94.

The dispute pertains to the land of khasra no.650 area 0.10 hectares out of which the petitioner was in possession of the piece of land admeasuring 360 sq. mtrs. The petitioner was evicted from that plot by order of the Tehsildar dated 11.4.94 passed under Section 91 of the Land Revenue Act. Contention of the learned counsel for the petitioner is that the land of khasra no.650 with area of 0.10 hectares does not form part of khasra no.243 and finding to this effect recorded by the Board of Revenue while reversing the order of Revenue Appellate Authority is bad in law. According to him his possession was over the land of old

khasra no.243 out of which new khasra no.650 was formed and the Revenue Appellate Authority has rightly held so. Learned counsel further submitted that the land of khasra no.650 slightly exceeds the land of khasra no.243 and, therefore, khasra no.652 cannot be taken to have been made out of the old khasra no.243. The learned Board of Revenue has erred in not correctly appreciating the facts. Learned counsel further submits that the land which was in possession of the petitioner was sold to him by one Jagdish who had purchased the said land from Sagarmal. This was the land of khasra no.241. The petitioner acquired the right over the land in dispute by virtue of an agreement executed between him and Jagdish. The Revenue Appellate

Authority has therefore rightly held the petitioner entitled to continue in possession of the same. Shri Om Prakash Jhaharia, learned counsel for the petitioner further argued that the Tehsildar has straightway proceeded to dispossess the petitioner under direction of Assistant Collector and did not draw any proceedings u/s. 91 of the Land Revenue Act against him.

On the other hand, Shri B.S. Chhaba, the learned Dy. Government Advocate submits that the proceedings u/s. 91 was very much initiated on the basis of the report of the Halka Patwari. The Halka Patwari had reported that not only the petitioner but Pitharam and Khayali had illegally encroached upon the land of khasra no.650 and when he was

again asked to confirm, the Patwari by his order dated 11.4.94 again confirmed that all these three persons had encroached over the land. The Tehsildar accordingly proceeded on the side. All of them failed to produce any title documents but possess the land in dispute. He submitted that the Revenue Appellate Authority has wrongly concluded that new khasra no.650 was not made of old khasra no.243 and on that basis its finding that khasra no.650 was made of old khasra no.241 was bad in law. In doing so, the Revenue Appellate Authority has omitted to consider the Milan Keshtraphal. The Board of Revenue has rightly corrected this error and was right in holding that the new khasra no.650 was made out of old khasra no.243

and the petitioner failed to produce any title / document in regard to land in dispute. He further submits that this is a finding of fact, which cannot be re-appreciated by this Court in writ of certiorari. Moreover, he submits that when the petitioner has been dispossessed by the Tehsildar rightly in exercise of its powers under the Land Revenue Act, there is no case for interference by this Court.

Having heard the learned counsel for the parties I find that the Board of Revenue on appreciation of the evidence or the material on record including Milan Keshtraphal and judgment of the Revenue Appellate Authority has come to hold that the dispute land of khasra no.650 measuring 0.10 hectares was recorded as

Gair Mumkin Dhani in the jamabandi of Svt. 2050 to 2053 and corresponding old khasra no.243 was also recorded in the jamabandi of Svt. 2031 to 2034 as bada. The Board held that according to Milan Keshtraphal, new khasra no.650 was made out of old khasra no.243 in so far as the land of Ram Kumar and Prabhat is concerned. The Board held that such lands measuring 2 bighas and 5 biswas were the lands of the old khasra no.243 as evident from jamabandi Svt. 2031 to 2034. In the face of this categorical finding of the Board, the conclusion that has been arrived at is that the land which was in possession of the petitioner was the land of old khasra no.243 and Prabhata has no legal right of whatsoever kind to sell out the said land to the petitioner or

anyone else. The Tehsildar having agitated in exercise of its powers under Section 91 of the Land Revenue Act and process have removed the encroachment cannot be held to have exceeded its jurisdiction. The finding arrived at by the learned Board of Revenue as to the exact location and number of the khasra of the land which was in possession of the petitioner are findings of the facts which in my considered opinion cannot be re-examined by this Court in exercise of its supervisory powers under Article 227 of the Constitution of India. The order of Board of Revenue does not suffer from any legal error as may be described as error apparent on the face of record. I, therefore, do not find any merit in this writ petition.

The writ petition is dismissed with no order as to costs.

Rs/- **(Mohammad Rafiq),J.**